

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

SUZETTE D. DUTCHER, an
individual,

Plaintiff,

vs.

THE STATE OF NEBRASKA
DEPARTMENT OF CORRECTIONS,

Defendant.

4:18-CV-3144

MEMORANDUM AND ORDER

This matter is before the Court on the Magistrate Judge's Findings and Recommendation ([filing 19](#)) recommending that the Court grant the State of Nebraska's motion for partial judgment on the pleadings ([filing 12](#)). The plaintiff has not objected to the Magistrate Judge's recommendation.

Title 28 U.S.C. § 636(b)(1) provides for de novo review of a Magistrate Judge's findings or recommendations only when a party objects to them. *Peretz v. United States*, 501 U.S. 923 (1991). Failure to object to a finding of fact in a Magistrate Judge's recommendation may be construed as waiving the right to object to the Court's order adopting the recommendation of the finding of fact. [NECivR 72.2\(f\)](#). And the failure to file an objection eliminates not only the need for de novo review, but any review by the Court. *Thomas v. Arn*, 474 U.S. 140 (1985); *Leonard v. Dorsey & Whitney LLP*, 553 F.3d 609 (8th Cir. 2009); see also *United States v. Meyer*, 439 F.3d 855, 858-59 (8th Cir. 2006).¹

Accordingly, the Court will adopt the Magistrate Judge's recommendation that the State's motion for partial judgment on the pleadings

¹ And in any event, the Court agrees with the well-reasoned opinion of the Magistrate Judge.

be granted, and will dismiss the plaintiff's ADA claim. Her remaining claim arises under state law. The Court *may* continue to exercise supplemental jurisdiction over that claim. *See* 28 U.S.C. § 1367(a) and (c)(3); *Carlsbad Tech., Inc. v. HIF Bio, Inc.*, 556 U.S. 635, 639-40 (2009). But the Court can also remand that claim to state court. *See* § 1367(c)(3); *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 357 (1988). The Court has "broad discretion in determining whether to exercise supplemental jurisdiction[.]" *Crest Const. II, Inv. v. Doe*, 660 F.3d 346, 359 (8th Cir. 2011), and, in fact, where "resolution of the remaining claims depends solely on a determination of state law, the Court *should* decline to exercise jurisdiction." *Glorvigen v. Cirrus Design Corp.*, 581 F.3d 737, 749 (8th Cir. 2009) (emphasis supplied) (quotation and citations omitted).

In making that determination, the Court must consider factors such as judicial economy, convenience, fairness, and comity. *Id.*; *see Wilson v. Miller*, 821 F.3d 963, 970 (8th Cir. 2016). But "[i]n the usual case in which all federal-law claims are eliminated before trial, the balance of factors to be considered under the pendent jurisdiction doctrine will point toward declining to exercise jurisdiction over the remaining state-law claims." *Wilson*, 821 F.3d at 971; *Williams v. Hobbs*, 658 F.3d 842, 853 (8th Cir. 2011) (quotation and citations omitted). The Court finds no factor that distinguishes this case from the usual case. *See Wilson*, 821 F.3d at 971. Accordingly, the Court will decline supplemental jurisdiction, and will remand the plaintiff's state-law claim.

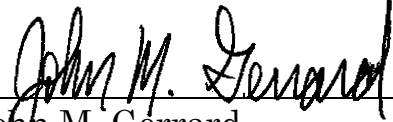
IT IS ORDERED:

1. The Magistrate Judge's findings and recommendation ([filing 19](#)) are adopted.

2. The State's motion for partial judgment on the pleadings ([filing 12](#)) is granted.
3. The plaintiff's ADA claim is dismissed.
4. This case is remanded to the District Court for Red Willow County, Nebraska.
5. A separate judgment will be entered.

Dated this 30th day of August, 2019.

BY THE COURT:



John M. Gerrard
Chief United States District Judge